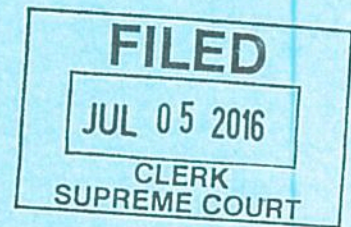


COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2015-SC-000581



GARRARD COUNTY, KENTUCKY, ET AL.

APPELLANTS

V.

APPELLEE'S BRIEF

KEVIN MIDDLETON

APPELLEE

On appeal from the Court of Appeals
Case No. 2014-CA-00187-MR

I hereby certify that a true copy of the Appellee's Brief has been served in accordance with the applicable Rules of Civil Procedure, upon each of the following: Hon. Jonathan L. Gay, Hon. Erica K. Mack, Walther Roark & Gay, 163 East Main St., Suite 200, P.O. Box 1598, Lexington, KY 40588; and, Samuel P. Givens, Jr., Clerk, Kentucky Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601 this the 5th day of July 2016. I also hereby certify that the record on appeal was not withdrawn by the party filing this Brief.

BY: 

Geny L. Calvert, II
Calvert Law Group
117 West Short Street
Lexington, KY 40507
Phone: (859) 361-2941

Counsel for Appellant

INTRODUCTION

This is a civil case involving the powers of, and limitations on, the Garrard County Fiscal Court to establish and/or modify the salary for the Office of Garrard County Jailer. The Appellee, KEVIN MIDDLETON, the duly elected Garrard County Jailer, was the Plaintiff at trial. The Appellants, consisting of the COUNTY OF GARRARD, the GARRARD COUNTY JUDGE EXECUTIVE and the GARRARD COUNTY MAGISTRATES, were the Defendants at trial. At issue was the Fiscal Court's ability to reduce the Jailer's salary during an unexpired term, and its ability to reduce the Jailer's salary between elected terms.

After agreeing on a set of Stipulated Facts, and arguing the matter before the trial court, all parties having moved the trial court for summary judgment, the entire matter was submitted to the trial court on the record. The trial court granted partial summary judgment in favor of the Appellee as to the first issue (the salary during an unexpired term), and granted partial summary judgment as to the Appellants as to the second issue (the salary between terms of office). After that judgment was amended to provide some requested clarifications, both parties appealed to the Court of Appeals, where oral arguments were held.

The Court of Appeals issued an Opinion affirming the award of back pay for the unexpired term; reversed the denial of increased pay for the elected term of office; and, denied the Appellee his costs and attorneys' fees.

The Appellants sought Discretionary Review in this Court, which was granted.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellant believes that oral argument would assist the Court in deciding the issues presented in this appeal. Accordingly, the Appellant requests that oral arguments be scheduled.

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STATEMENT OF THE CASE

The Parties:

1. The Appellee, KEVIN MIDDLETON, is a citizen and resident of Garrard County, Kentucky, who holds the position of Garrard County Jailer. (R. at 1, Complaint, Par. 1).
2. The Appellant, GARRARD COUNTY, KENTUCKY, is a body politic in the Commonwealth of Kentucky. (R. at 1, Complaint, Par. 2).
3. The Appellant, JOHN WILSON, is the duly elected County Judge Executive of Garrard County, Kentucky. (R. at 1, Complaint, Par. 3).
4. The Appellant, JOE LEAVELL, DOAN ADKISON, RONNIE LANE, FRED SIMPSON and BETTY HOLTZCLAW are the duly elected Magistrates of Garrard County, Kentucky. (R. at 1, Complaint, Par. 4-8).

STATEMENT OF FACTS & PROCEDURAL HISTORY

The former Jailer of Garrard County, Kenny Tuggle, was elected in 2006 for a four year term ending December 31, 2010, at a salary set by the Fiscal Court at \$30,547.97 per year. (R. at 41, Stipulation of Facts). Mr. Tuggle resigned from the Office of Jailer effective December 31, 2008, leaving two years of his unexpired term. (R. at 41, Stipulation of Facts). The Appellee, KEVIN MIDDLETON, was appointed by the Appellant, JOHN WILSON (County Judge Executive) to fill the unexpired term vacated by Mr. Tuggle, agreeing to accept a salary of \$20,000 per year. (R. at 41, Stipulation of Facts). Prior to the 2010 elections, the Fiscal Court set the salary for the

Office of Jailer for the next four year term at \$20,300.02; and, the Appellee ran for the office, and won the office. (R. at 41).

On April 21, 2012, the Appellee filed the underlying suit in Garrard Circuit Court alleging that the reduction in salary for the unexpired term of the former Jailer was in violation of Kentucky Constitution Sections 161 and 235; and, that the reduction in salary from the previous term to the current term was in violation of KRS 441.245. (R. at 1, Complaint, Par. 10-11). Both sides eventually moved for summary judgment, and then presented the trial court a set of Stipulated Facts. (R. at 41).

On October 18, 2013, the trial court entered an order granting summary judgment both for and against the Appellee on his claims. The trial court granted the Appellee's claim for additional compensation for the remainder of the unexpired term of the former jailer (January 21, 2009 to December 31, 2010), and awarded him the difference between the salary of the previous jailer and that which the Appellee agreed to when appointed. (R. at 104). The trial court denied the Appellee's claim for any additional compensation for the current term of office, concluding that KRS 441.245(3) granted the Fiscal Court the power to either raise or lower the salary for jailer between elected terms. (R. at 104).

The trial court subsequently entered an order amending the judgment on January 3, 2014, clarifying its earlier order as follows: (1) the exact amount of additional pay awarded was calculated to be \$20,510; (2) it was ordered that the Fiscal Court had to pay their share of the Appellee's Social Security and retirement contribution based on the award; (3) the Appellee was awarded prejudgment interest from the time each payment was due, and post judgment interest from December 15, 2013, both at the rate of 8% per annum; and, (4) the Appellee's request for attorney's fees was denied. (R. at 123).

The Appellee filed his Notice of Appeal on January 31, 2014, and the Appellants filed a Notice of Cross-Appeal on February 10, 2014. The parties submitted their respective briefs; oral arguments were held on June 25, 2015; and, on September 4, 2015 the Court of Appeals issued an Opinion (Appellants' Appendix 1) affirming in part and reversing in part. The Court of Appeals Opinion agreed with Middleton's arguments as to his salary during the unexpired term and between terms, denying him only the relief he sought for his costs and attorney's fees.

On November 4, 2015, the Appellants filed a Motion for Discretionary Review by this Court. On March 10, 2016, this Court granted Discretionary Review.

STANDARD OF REVIEW

The applicable standard of review on appeal of a summary judgment is, "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Kentucky Rules of Civil Procedure (CR) 56.03. Since this appeal involves exclusively matters of statutory construction, this Court should review the issues de novo. *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001); *Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky.2007).

ARGUMENT

I. The Court of Appeals was correct in holding that the Garrard County Fiscal Court violated KRS 441.245 by reducing the salary for the office of Jailer between terms of office.

A) Background:

In order to understand the current state of the law in Kentucky regarding jailers, it is necessary to first resort to the original underpinning of all law in Kentucky, our Constitution; and, then work forward from there with the various statutes which have affected a jailer's salary.

To begin with, Kentucky is the only state in the Union whose state constitution specifically refers to jailers. (*Duties of Elected County Officials – Informational Bulletin No. 114*, Legislative Research Commission, Frankfort, KY 2002). Section 99 of our Constitution requires that every four years, a jailer “shall be elected in each county” along with the various other “county officers.” (Ky. Const. Sec. 99). Therefore, short of a Constitutional Amendment, there shall always be a jailer elected in each county every four years. Further examination of the relevant statutes at hand, however, make plain that not every jailer is to be considered in the same class under the law for purposes of both salary and other incidents of his/her employment.

The evolution of exactly how, and how much (or little) a jailer was to be paid, has followed a confusing path since 1891. According to some background provided in *Nickell v. Thomas*, 665 S.W.2d 927 (Ky. App. 1984),

“Prior to 1982, the various county jailers in the state of Kentucky operated their offices under a ‘fee system,’ under which the jailer paid for the

expenses of operating his jail from statutory fees which his office received. The basic expenses which the jailers paid from their statutory fees included food, supplies, salaries of deputies and the salary for the jailer himself. In 1982, a new statutory system was enacted whereby basic jail operating expenses were to be budgeted for and paid by the fiscal court. The fiscal court was also responsible to set the annual salary for the jailer and pay it to him on a monthly basis from its county jail operating budget.” Id, 928.

The Court in *Nickell*, after providing that history, went on to note that “at the heart of [that] particular appeal [was] the interpretation of KRS 441.009, which set forth the guidelines which the fiscal courts were required to follow in calculating the jailer’s salary.” KRS 441.009 later became renumbered as KRS 441.245, the various versions of which, as in *Nickel*, lay at the heart of this appeal. Because of the timing of the enactment of statutory changes regarding the salaries for jailers, the only relevant Kentucky caselaw on this issue is the case of *Wallace v. King*, 973 S.W.2d 485 (Ky. App. 1998).

B) Wallace v. King:

The *Wallace* case presented the facts of Steve Wallace, who was first elected as Jailer of Clinton County in November of 1993. Prior to that election, the Clinton Fiscal Court had reduced the salary for Jailer from \$26,600 to \$15,000. One month after taking office, the Fiscal Court raised his salary back to \$26,600, only to reduce it 8 months later to \$12,000. The reason for the changes given in the opinion is that the county was discontinuing its jail operations. Wallace sued claiming he was entitled to the \$26,600 salary. In accordance with the law set forth in the previous argument hereinabove, the trial court correctly held that both changes to his salary which occurred after he began his

term of office were unconstitutional; but, then found that the reduction in salary which was enacted before his term began was legal. Wallace appealed.

In its ruling in *Wallace*, this Court provided a very thorough recitation of the relevant statutes governing the salaries for jailers in Kentucky, together with their recent changes. The only confusing nature of this analysis is caused by the fact that the Court of Appeals in that decision, which it rendered on July 17, 1998, was primarily interpreting and applying KRS 441.245 as it existed then. That statute was amended by the General Assembly effective July 15, 1998. Most important to this appeal, though, the portions of the old statute relied upon by the Court in *Wallace* were retained in the amended statute, although some sections were re-organized.

The Court in *Wallace* began its analysis of the reduction in salary from one term to the next by pointing out that KRS 441.254 was the controlling statute regarding compensation for jailers. Quoting from then subsection (4) of the statute,

“Except as provided in subsection (5) of this section, the jailer’s compensation for 1983 and subsequent years shall equal the prior year’s compensation and may be adjusted by the fiscal court for the change in the prior year’s consumer price index.’

The plain meaning of this statute mandates that the jailer’s salary remain the same from year to year – allowing an adjustment solely to accommodate the change in the consumer price index” [w]hen the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written. [string cite omitted] In this case, the jailer’s salary was \$26,600 for the previous year; therefore, it must remain at \$26,600.” *Wallace*, 486.

The Court further clarified this point by saying:

“On its face, KRS 441.245(4) mandatorily directs that 1983 was the ‘bellwether’ year to determine a jailer’s salary. There is neither equivocation nor ambiguity in the language dictating that whatever sum

was the jailer's salary in 1983 should continue thereafter – with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index ... The only decrease is provided at subsection (5) of the statute: 'Effective January 6, 1986, the salary for jailers in any county where there is no jail and the jailer does not transport prisoners shall be twelve thousand dollars (\$12,000) per year.'" Id, 487.

The Court went on to find in favor of Mr. Wallace, ruling that the reduction from \$26,600 to \$15,000, even though enacted before the elected term, violated KRS 441.245 for reasons related to subsection (5) of the statute quoted above. The statute, as it existed then, provided that, since 1983, the only reduction that could be made to a jailer's salary would be a reduction to the minimum for a county which had no jail and whose jailer did not transport prisoners. The Court held that even though Clinton County was planning to do away with its jail, it hadn't done so before the beginning of Mr. Wallace's term; and, therefore, any reduction in salary from the previous term (even though implemented before his election) violated KRS 441.245.

Wallace v. King, 973 S.W.2d 485 (Ky. App. 1998) remains the only judicial review of KRS 441.245.

C) Reliance on *Wallace*:

The Appellants continue to posit that *Wallace* is completely irrelevant to the case at hand, simply because the statute as interpreted in that case was later amended. Even though a unanimous Court of Appeals panel found it very easy to "connect the dots" between the two versions in order to find for the Appellee below, the Appellants argue that the proper construction of the newer version requires convoluted references to other statutes as well as a good bit of mental and linguistic gymnastics.

According to the Court of Appeals' Opinion, the language relied upon by the Court in *Wallace*, from the previous subsection (4) of 441.245, which forbade any reduction in salary (unless the county had no jail and the jailer did not transport prisoners) survived the 1998 amendments; and, is today embodied in subsection (3) of the statute which reads:

"The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64¹ may be set at a higher level if the salary does not exceed the constitutional salary limit applicable to jailers. **These jailers' salaries shall at least equal the prior year's level** and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to provisions of KRS 64.527." (emphasis added) KRS 441.245 (3).

Likewise, the newer version of KRS 441.245 reads:

- "(1) The jailer who operates a full-service jail shall receive a monthly salary pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail from the county jail operating budget.
- (2) No jailer holding office in the Commonwealth on or after January 6, 1999, shall receive an annual salary of less than twenty thousand dollars (\$20,000).
- (3) The salaries of jailers who are not subject to any salary schedule in KRS Chapter 64 may be set at a higher level if the salary does not exceed the constitutional salary limit applicable to jailers. **These jailers' salaries shall at least equal the prior year's level** and may be adjusted by the fiscal court for the change in the prior year's consumer price index according to the provisions of KRS 64.527." (Emphasis added).

The plain implication of the continued use of the same words in the statute, even as amended in 1998, is the same in regards to the issues in this appeal as it was in the *Wallace* case. Plainly put, unless the jailer operates a full service jail (requiring reference

¹ Subsection (1) of the statute provides that "The jailer who operates a full service jail shall receive a monthly salary pursuant to any salary schedule in KRS Chapter 64 applicable to jailers operating a full service jail from the county jail operating budget."

to KRS Chapter 64 for his salary), his salary from year to year shall at least equal that of the previous year. Though the Stipulated Facts entered into by the parties does not identify whether or not Garrard County “operates a full service jail”, the Appellants identified in their Motion for Summary Judgment and Memorandum in Support thereof below (filed on September 12, 2013) that Garrard County does not have a full service jail. (R. at 43, Defendants’ Motion for Summary Judgment and Memorandum In Support Thereof, page 1). Furthermore, Exhibit “A” to that motion is an Affidavit from Appellant, JOHN WILSON, County Judge Executive, which also identified the duties of the Appellee, which do not include operating a full service jail but do include transporting prisoners. (R. at 59, Defendants’ Motion for Summary Judgment and Memorandum In Support Thereof, Exhibit “A”).

Therefore, the law forbidding any reduction in the salary of a jailer, unless the county closes a jail and does not require the jailer to transport prisoners, remains the same today as it did when *Wallace* was decided. The fact is that, in 1983, the General Assembly simply removed from the counties the ability to reduce the salary of a jailer from term to term. Even though Garrard County has no jail, the record reflects that the Appellee’s duties as Garrard County Jailer include the transport of prisoners; therefore, he is among the class of jailers to whom KRS 441.245(3) applies, and the salary for the Office of Garrard County Jailer cannot be reduced from one term to the next (unless his duties no longer include transporting prisoners, in which case a reduction could be made but not until the next term of office.)

D) Ambiguity:

The cardinal rule of statutory construction is that the intention of the legislature should be ascertained and given effect. *MPM Financial Group, Inc. v. Morton*, 289 S.W.3d 193, 197 (Ky.2009); *Saxton v. Commonwealth*, 315 S.W.3d 293, 300 (Ky.2010) ("Discerning and effectuating the legislative intent is the first and cardinal rule of statutory construction."). This fundamental principle is underscored by the General Assembly itself in the following oft-quoted language of KRS 446.080(1): "All statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature....". *Jefferson County Bd. of Educ. v. Fell*, 391 S.W.3d 713 (Ky. 2012).

As this Court further explained in *Shawnee Telecom Resources, Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky.2011):

"In construing statutes, our goal, of course, is to give effect to the intent of the General Assembly. We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration.... We presume that the General Assembly intended for the statute to be construed as a whole, for all of its parts to have meaning, and for it to harmonize with related statutes.... We also presume that the General Assembly did not intend an absurd statute or an unconstitutional one.... Only if the statute is ambiguous or otherwise frustrates a plain reading, do we resort to extrinsic aids such as the statute's legislative history; the canons of construction [etc]..." *Shawnee Telecom*, 551.

According to the Court of Appeals, the long and winding argument used by the Appellants to derive *their* interpretation of KRS 441.245(3) [the portion at the heart of this case], begins with a misstep at the very beginning – and for that reason is wholly illegitimate. As with any endeavor, beginning off course assures arriving at the wrong destination; and, that's exactly what the Appellants have done since the inception of this matter. Specifically, the Court of Appeals pointed out in their Opinion that when the

Appellants read KRS 441.245(3), they themselves insert qualifying language which simply isn't there. Since the qualifying language added by the Appellants is the only source of any ambiguity, the Court of Appeals rejected the argument out-of-hand, as the following portion of their Opinion reveals:

“[I]n their view, KRS 441.245 does not prohibit reducing the salary of a jailer between terms. This is because, as they read it, “the prior year” as used in KRS 441.245(3) means “the prior year so long as that prior year was within the current term of office and not within a preceding term of office.” Court of Appeals Opinion, Page 7 (Appellant’s Appendix 1).

In other words, the only ambiguity which exists regarding the statutory language at issue herein, is in fact created by the Appellants themselves by unilaterally inserting (a lot of) qualifying language behind the phrase “the prior year” in KRS 441.245(3). The Court of Appeals below then analyzed the previous section of the statute (which they considered in *Wallace*), side-by-side with the newer section at issue in this case, and found them to evidence the very same legislative intent. When construing the reference in KRS 441.245(3) to “the previous year”, the Court of Appeals held:

“Here, the plain meaning of this phrase is inescapable. To paraphrase the *Wallace* court, whatever sum was the jailer’s salary the prior year should continue thereafter – with the only change permitted consisting of an upward escalation to allow for inflation in reference to the consumer price index. Furthermore, even if ‘the prior year’ could be construed a latently ambiguous phrase (and it is not), it is the same phrase this court interpreted in *Wallace* to mean *the prior year* – not, as urged by Garrard County, ‘*the prior year so long as that prior year was within the current term of office and not within a preceding term of office*.’ And, by including this same language in the current version of KRS 441.245(3), the General Assembly is presumed to have intended for the same meaning to apply.” Court of Appeals Opinion, Page 12 (Appellants’ Appendix 1).

Further, the Court of Appeals stated that, “A universally accepted rule of statutory construction is that the General Assembly is presumed to know the status of the law and

the constructions placed on it by the courts” ... (string cite omitted), and, “Courts construe statutes; we do not rewrite them. Thus, in light of the absence of any other authority addressing the salary of a jailer tasked with transportation responsibilities but who does not operate a full-service jail, we are constrained by the patent language used by the General Assembly, regardless of whether we like the outcome.” Court of Appeals Opinion, Page 12 (Appellants’ Appendix 1).

Although the Appellants couch their argument as one involving the legislative history of the statute itself (and others), they present this Court with nothing other than the naked changes to the statute pre and post-*Wallace*. There is nothing in the legislative record indicating that the legislature was even thinking about the kinds of arguments or issues now made by the Appellants, let alone that they were actually trying to alter the statute post-*Wallace* in order to avoid the same result in the future. The statute existed before *Wallace*, was interpreted in *Wallace*, was then changed by the General Assembly, yet the language at hand didn’t change.

The Appellants include no true “legislative history” evidence in their arguments because it doesn’t exist. The only thing this Court has to go on, the same as it was for the Court of Appeals, is the naked and unambiguous changes in statutory language and organization from the previous version of KRS 441.245 to the present one. There is no explanation or official comment adjoining the newer version, nor is there any sort of committee or floor testimony from the legislature which could tend to indicate they meant to change the law in the way the Appellants now urge.

Reading the two versions of the statute together, a unanimous Court of Appeals panel saw absolutely no ambiguity, except for that created by the erroneous beginning of the Appellants' own method of interpreting them.

For the reasons set forth above, the Appellee again submits that the trial court clearly erred in holding that the Appellants had the authority to reduce the salary for the Office of Jailer which began January 1, 2011, even though the change was implemented before the term of office began. The Appellee respectfully asserts that any plain reading of KRS 441.245 forbade the Garrard County Fiscal Court from reducing the salary for the office of Jailer between terms.

II. The Appellants should be liable for the Appellee's costs and expenses, including reasonable attorney's fees, related to this action.

As argued before the trial court, the Appellee recognizes that Kentucky generally follows "the American Rule" regarding a claim for the recovery of attorney's fees per *Kentucky State Bank v. AG Services, Inc.*, 663 S.W.2d 754 (Ky. App. 1984), yet even that decision recognizes that the particular facts and circumstances of any given case can, as a matter of equity, require that one party be compelled to bear the other's attorney's fees. For common sense reasons of basic fairness, the Appellee asserts that this is indeed one of those rare cases – for two reasons.

First, the Appellant, JOHN WILSON, in his official capacity as Garrard County Judge Executive, declared publicly as early as November of 2011 that the Fiscal Court knew that their actions complained of in the Appellee's original Complaint violated the

law, and that they knew that the Appellee was owed back pay for that reason. See the following quotes from newspaper articles presented to the trial court in this regard:

“That salary, however, apparently is in violation of the law, and magistrates acknowledged the mistake in November. They voted to file a lawsuit to seek a Declaratory Judgment from the courts to settle Middleton’s back pay from serving the two years remaining on Tuggle’s term, as well as establishing his salary going forward from when Middleton was elected and took office in January 2011. That lawsuit, however, was never filed, Wilson said Wednesday, leaving Middleton to pursue legal action on his own.” *The Advocate Messenger*, April 26, 2012. (R. at 23).

“Quoting Wilson, ‘So, legally I don’t think we could have made that agreement because the Constitution prohibits changing a salary during that term of office,’ Wilson said last November, ‘So we owe Kevin Middleton back-pay for the last two years of Kenny’s term. We know that. We owe him the money’.” *Garrard Central Record*, April 26, 2012. (R. at 24).

Therefore, even though the Appellants knew as of November 2011 that their actions regarding the Appellee’s salary had violated the law, and that they owed him back-pay, and even though the Fiscal Court voted to file an action seeking a Declaratory Judgment, they did nothing. Some five months later, the Appellee himself was forced to hire private counsel and bring the underlying suit. Furthermore, despite having publicly acknowledged the illegality of their actions regarding his salary, once the Appellee filed suit, the Appellants collectively then generally and vigorously denied the validity of his claims before the trial court. Despite having publicly initially agreeing with the Appellee’s claims, they have now continued all the way to our state’s highest court defending a position which they knew to be factually and legally incorrect.

This case began over four years ago. The Appellee, Kevin Middleton, was forced to bring the original suit using private counsel and his own personal funds. On the contrary, the Appellants keep losing but keep appealing, at the expense of the Garrard

County taxpayers, not using their own personal funds. One would be hard-pressed to imagine another course of action which more clearly constitutes the taking of a legal position which the Appellees knew had no basis in either fact or law. Had the Appellants not taken such a course of action, the Appellee certainly would not have had to expend the attorney's fees he has to date, and continues to expend.

Secondly, the Appellee filed the underlying action not only in his individual capacity, but in his official capacity as the Jailer of Garrard County. It is manifestly unjust, especially given the course of action which led to this appeal, for the Appellants' legal fees to be paid out of county funds, while the Appellee, also a county official, should bear all of his own legal fees on a personal level – especially since the Garrard Fiscal Court was in a much better position at the outset to know the relevant law, and to follow it.

For those reasons, as a matter of equity, the Appellant asserts that the trial court erred in denying the Appellant recovery of his reasonable attorney's fees.

CONCLUSION

The origins of this matter lay squarely on the shoulders of the Appellants, for having either not known the law before ever taking any action to hire the Appellee. Of any person or party in a given Kentucky county, surely the Fiscal Court itself should correctly understand the limitations on compensating constitutional officers within their county. Whether the Appellants believe that the General Assembly should be able to remove their ability to lower the salary for that office between terms or not, is a purely normative argument; and, frankly, is immaterial. KRS 441.245 and the only appellate

decisions interpreting the same establish unequivocally that that is exactly what occurred in 1982 and again in 1998. Therefore, as the duly elected Jailer of Garrard County, the Appellee's salary cannot be less than it was for his predecessor. Any disagreement with this by the Appellants is properly directed only to the General Assembly, not to this Court. Lastly, even once the Appellants knew the certainty of the positions just stated, and admitted it publicly, they then chose to vigorously deny the same before the trial court, causing the Appellee to have to spend his personal funds in order remedy their errors.

For all of the foregoing reasons, the Appellee respectfully requests that this Court:

- (A) Affirm those portions of the Opinion by the Court of Appeals which ruled in favor of the Appellee;
- (B) Reverse the Court of Appeal's denial of an award of reasonable attorney's fees for the Appellee; and,
- (C) Remand this matter to the Garrard Circuit Court in accordance therewith.

Respectfully Submitted,



Gerry L. Calvert, II
Calvert Law Group
117 West Short Street
Lexington, KY 40507
Phone: (859) 361-2941

And

J. Paul Long, Jr.

324 West Main Street
P.O. Box 85
Stanford, KY 40484
Phone: (606) 365-3191

Counsel for Appellant

